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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

12 MANUEL L. BELIZ,
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14 Plaintiff,

15 v.

16 ROBERT ALEKSINSKI, *et al*,
17 Defendants.

Case No. C09-5472BHS

ORDER CONVERTING A MOTION TO
DISMISS TO A MOTION FOR
SUMMARY JUDGEMENT

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19 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned
20 Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local
21 Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. Before the court is a motion to dismiss
22 filed by Defendants (Dkt. # 7).

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24 The court has reviewed the motion and notes that defendants provide several documents
25 outside of the complaint. While some of the documents relate to the argument that plaintiff did
26 not exhaust administrative remedies, several others do not.

1 A motion to dismiss filed pursuant to Fed. R. Civ. P. 12 (b) (6) should not include
2 documents outside of the complaint. The proper procedure for the court is either to convert the
3 motion to dismiss to a motion for summary judgment or, not to consider the documents.

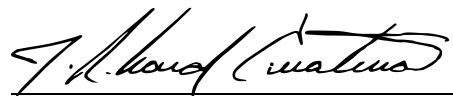
4 The motion to dismiss will be converted to a motion for summary judgment.

5 If a motion to dismiss is converted to a motion for summary judgment the parties must be
6 given notice and an opportunity to amend or supplement the filings. Graux v. Pulley, 739 F.2d
7 437 (9th Cir. 1984).
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9 Any additional briefing defendants wish to submit must be received and served on or
10 before January 8, 2010. Any response plaintiff wishes to file must be received and served on or
11 before January 22, 2010. Any reply must be served and filed on or before January 29, 2010.
12 The motion, (Dkt. # 7), is re-noted on the court's own motion for February 5, 2010.

13 The Clerk of Court is directed to send plaintiff a copy of this order and re-note the
14 motion, (Dkt. # 7), for February 5, 2010.
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16 DATED this 10th day of December, 2009.
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20 J. Richard Creatura
21 United States Magistrate Judge
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